

APRIL 2017 CASE LAW UPDATE

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Merrell v. Workers' Compensation Appeal Board (Commonwealth of Pennsylvania Department of Corrections), 158 A.3d 242 (Pa. Cmwlth April 3, 2017)

Issues: Whether the Workers' Compensation Judge (WCJ) was collaterally estopped from making her own determination as to trainee's disability, notwithstanding arbitrator's prior award of Heart and Lung Act benefits.

Answers: No.

Analysis: Claimant worked for the Department of Corrections (Employer) as a corrections officer trainee at a State Correctional Institution. Claimant filed a claim for benefits under the Heart and Lung Act, which was denied by Employer. Under the terms of the collective bargaining agreement between the Pennsylvania State Corrections Officer Association and Employer, an arbitrator was assigned to hear Claimant's grievance of the denial of Heart and Lung benefits. A hearing was held at which Claimant and Employer presented evidence, in the form of depositions and exhibits.

The arbitrator issued an award granting Claimant Heart and Lung benefits. The arbitrator credited Claimant's testimony finding it was "direct, clear and forthright." He specifically found that Claimant's delay in reporting his injury was not dispositive and Claimant's behavior was "a reasonable response under the circumstances." Further, the arbitrator credited the medical opinion of claimant's treating physician.

After the initiation of the H & L proceedings, Claimant filed a claim petition under the Workers' Compensation Act seeking disability benefits.

The WCJ denied Claimant's motion for an award of disability benefits, holding that the claimant was not collaterally estopped by the arbitration award. The WCJ found that Claimant sustained a work injury, but he did not prove a wage loss caused by the work injury. The WCJ granted Claimant's claim petition for medical benefits but he denied disability benefits. Claimant appealed to the Board who affirmed.

Collateral estoppel will foreclose re-litigation of issues of fact or law in subsequent actions where the following criteria are met: (1) the issue in the prior adjudication is identical to the one presented in the later action; (2) there was a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with a party to the prior adjudication; (4) the party against whom collateral estoppel is asserted has had a full and fair opportunity to litigate the issue in the prior action; and (5) the determination in the prior proceeding was essential to the judgment.

The Commonwealth Court concluded that an arbitration proceeding for the H & L Act is more *ad hoc* and informal than a proceeding governed by the Workers' Compensation Act. This is most notable with regard to the standards for the admission of medical evidence and the level of detail required in a WCJ's decision. As such, the Court concluded that an arbitration and a workers' compensation proceeding are substantially different so Collateral Estoppel does not apply.

Conclusion and Practical Advice: The Commonwealth Court concluded that the arbitrator's award of Heart and Lung Act benefits did not collaterally estop the WCJ from making her own determination as to Claimant's disability.

Waugh v. Workers' Compensation Appeal Board (St. Mary Medical Center), (Pa. Cmwlth April 13, 2017) 2017 WL 1365608 (Unreported Decision)

Issues: Whether the Judge was justified in concluding that the claimant acted in Bad Faith to Justify a Termination from Employment.

Answers: Yes.

Analysis: Claimant was formerly employed as a certified nursing assistant (CNA) for St. Mary's Medical Center (Employer). On or around January 26, 2012, Claimant was injured during the course of her employment by a patient who grabbed and twisted her arm. Employer issued a notice of temporary compensation payable (NTCP), dated February 13, 2012. Claimant underwent two surgeries to correct the injury and returned to light duty work with Employer on April 12, 2012. At that time, Employer revoked the NTCP and issued a notice of compensation denial (NCD). However there were other periods of indemnity benefits paid after the issuance of a denial so the Judge treated the case as it was in a suspended status.

On May 28, 2014, Claimant was assisting two phlebotomists who were attempting to draw blood from a patient. Vondell Schools (Schools), a registered nurse, witnessed Claimant palpating the patient's arm in an attempt to find a vein from which the phlebotomists could draw blood. Schools informed Claimant that she was acting outside the scope of her job duties in violation of Employer's policy. Later that same day, Schools reported the incident to Claimant's supervisor.

Claimant was suspended effective immediately and was to leave work for the day. Employer issued a corrective action notice indicating that it was terminating Claimant's employment for performing procedures outside the scope of her employment, specifically "placing a tourniquet on [a] patient looking for IV access." Employer noted that the incident was not the first time Claimant had acted outside of the scope of her employment. Employer had previously reprimanded Claimant for administering medication to a patient, which was also an action outside of the scope of her employment.

Shortly after being terminated, Claimant filed a Petition for Reinstatement of compensation benefits and alleging that her disability related to her arm injury had reoccurred. Employer opposed Claimant's Petition, arguing that Claimant's own bad faith conduct of performing actions beyond the scope of her employment in violation of Employer's policy was the cause of her loss of earnings rather than her work injury.

The WCJ concluded that Claimant's lost wages were directly attributable to her being fired for violation of the hospital's policy. The WCJ also found that Employer terminated Claimant the following day for "working beyond her job description" and that "Claimant's loss of earnings as of May 29, 2014 was not related to her work injury and was caused by Claimant's own bad faith conduct of exceeding her job description." Claimant appealed to the Board who affirmed.

On Appeal to the Commonwealth Court, the Court outlined in detail the case law on the topic and affirmed the WCJ Decision by concluding that the claimant acted in Bad Faith.

However, this case does have a dissenting opinion that highlights the difficulty and distinction in these types of case. Even though this is an unreported Decision given that this area of the law is so fact specific, this case could prove beneficial.

Conclusion and Practical Advice: The Commonwealth Court concluded in an unreported decision that the claimant acted in bad faith at the time that she was terminated in violating the Employers policy. This case has a good history of the case law and a dissenting opinion that highlights some of the difficulties.